

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Clinton Wren,

Petitioner,

v.

Civil No. 07-4353 (JNE/JSM)
ORDER

Joan Fabian,
Commissioner of Corrections,

Respondent.

This case is before the Court on a Report and Recommendation issued by the Honorable Janie S. Mayeron, United States Magistrate Judge, on October 15, 2008. The magistrate judge recommended that Petitioner's application for habeas corpus relief under 28 U.S.C. § 2254 (2000) be denied and that the action be dismissed with prejudice. Petitioner objected to the Report and Recommendation. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation.

An appeal may not be taken from a final order denying a petition under section 2254 without a certificate of appealability (COA). 28 U.S.C. § 2253(c)(1)(A) (2000); Fed. R. App. P. 22(b)(1). A court cannot grant a COA unless the applicant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, "a COA should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason

would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Here, Petitioner has not demonstrated that reasonable jurists would find the rejection of Petitioner’s claims on the merits and procedural grounds debatable or wrong. Accordingly, Petitioner is not entitled to a COA.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner’s application for writ of habeas corpus relief under 28 U.S.C. § 2254 [Docket No. 1] is DENIED.
2. This action is DISMISSED WITH PREJUDICE.
3. Petitioner is not entitled to a certificate of appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 14, 2008

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge